

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA - NORTHERN DIVISION

BETTY ANN BURKS, <u>et</u> al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No. 2:06-CV-1081-MEF
	:	
EQUITY GROUP EUFAULA	:	
DIVISION, LLC,	:	
	:	
Defendant.	:	

JOINT MOTION TO STAY LITIGATION
PENDING RESOLUTION OF PETITIONS
FOR WRIT OF CERTIORARI.

Plaintiffs and Defendant, by their attorneys, jointly file this Motion to Stay Litigation Pending Resolution of Petitions for Writ of Certiorari and state as follows:

1. Plaintiffs, current and former employees of Equity's poultry processing plant, instituted this action under the Fair Labor Standards Act ("FLSA") seeking, on behalf of themselves and all others similarly situated, to recover wages and overtime for allegedly uncompensated time spent donning and doffing sanitary and protective clothing worn at defendant's poultry processing plant, as well as for related cleaning, waiting and walking time.

2. In this case, the claims and defenses of the parties involve, inter alia, the following issues: (a) whether the activities for which plaintiffs seek recovery constitute "work" under the FLSA; (b) whether the activities for which plaintiffs seek recovery constitute part of their "principal activity" under the FLSA; (c) whether the amount of time spent by plaintiffs performing the allegedly uncompensated tasks is de minimis; and, (4) whether the activities for which plaintiffs seek recovery are

removed from the definition of "work" by the "collective bargaining agreement" provision of Section 3(o) of the FLSA.

3. The Court previously granted plaintiffs' Motion to Facilitate Class Notice. The Class Notice has been mailed to the prospective plaintiff class, and plaintiffs have periodically filed additional Consents to Join. The deadline for filing Consents to Join is May 1, 2008.

4. The parties also have exchanged written discovery requests and continue to provide responsive information in connection with their discovery obligations.

5. Given the number of named plaintiffs and opt-in plaintiffs, both parties intend to schedule numerous depositions of relevant witnesses which will be costly and time consuming.

6. In addition, under the Court's current Scheduling Order, dispositive motions are due to be filed by May 30, 2008, expert reports are due by May 30, 2008 for the plaintiffs and June 30, 2008 for the defendant.

7. Currently, there are three separate cases with pending Petitions for Writ of Certiorari ("Petitions") before the United States Supreme Court that directly relate to the legal issues in this case:

- a. Anderson v. Cagle Foods JV, LLC, 488 F.3d 945 (11th Cir. 2007) -- Petition for Writ of Certiorari Pending, Case No. 07-910 -- addressing the scope of Section 3(o).
- b. DeAsencio v. Tyson Foods, Inc., 500 F.3d 361 (3d Cir. 2007) -- Petition for Writ of Certiorari

Pending, Case No. 07-1014 -- addressing the definition of "work," and scope and application of the "de minimis" rule for purposes of donning and doffing claims.

- c. Gorman v. Consolidated Edison Corp., 488 F.3d 586, (2d Cir. 2007) -- Petition for Writ of Certiorari Pending, Case No. 07-1019 -- addressing the application of "principal activity" for purposes of donning and doffing.

8. If the Supreme Court decides to grant certiorari in all or any of these now pending cases, it would likely affect the standards to be applied in this case and the basis for potential dispositive motions.

9. Likewise, the Supreme Court's decisions regarding these Petitions could affect the parties' respective theories, claims and defenses and, thus, the discovery that the parties would undertake.

10. In order to prevent the needless expenditure of time and money conducting discovery and preparing dispositive motions which could be rendered moot by a ruling on the Petitions, the parties request that the Court stay this case and all related deadlines for 120 days, with the exception of the filing of Consents to Join and the related deadline.

11. The 120 day stay will allow time for the Supreme Court to render decisions on the Petitions, and to determine whether to grant certiorari, after which the parties can evaluate the effect of the decisions and whether to request an additional stay period.

12. Other District Courts in this Circuit have entered stays in similar "donning and doffing" cases in the poultry industry. See, e.g., Latisha Brooks, et al., v. Cagle's Inc., et al., Civil Action No. 07-CV-36 (M.D.Ga. - Columbus Division); Quontysha Brown v. Equity Group - Georgia Division, LLC, Civil Action No. 1:07-CV-88-WLS (M.D.Ga. - Albany Division).

12. The parties request that the stay of these proceeding not affect the deadline for the filing of Consents to Join, which shall remain May 1, 2008, and plaintiffs shall still be allowed to file additional Consents to Join until that date.

WHEREFORE, the parties respectfully request that the Court grant their Joint Motion to Stay Litigation Pending Resolution of Petitions for Writ of Certiorari and enter an Order staying this matter for 120 days, with the exception of the filing of Consents to Join and the deadline for filing Consents to Join.

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EQUITY GROUP EUFAULA	:	
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	:	
Defendant.	:	

ORDER

AND NOW, this _____ day of _____, 2008,
in consideration of the Joint Motion to Stay Litigation Pending
Resolution of Petitions for Writ of Certiorari filed by the
parties to this action, it is hereby ORDERED:

1. The Joint Motion is GRANTED. The deadlines and all other proceedings in connection with this action are STAYED for 120 days from the date of this Order, with the exception of the filing of Consents to Join and the deadline for filing Consents to Join, which shall remain May 1, 2008.
2. No later than August 1, 2008, Counsel shall advise the Court as to whether they anticipate requesting any additional stay of this action, which the Court may consider at that time.

U.S.D.J.

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 EQUITY GROUP EUFAULA :
 DIVISION LLC, :
 :
 Defendant. :

CERTIFICATE OF SERVICE

The undersigned counsel for Equity Group Eufaula Division LLC hereby certifies that a true and correct copy of the Joint Motion to Stay in the above-captioned matter was filed electronically with the Clerk of Court on April 10, 2008 using the CM/ECF system, which will send notification of such filing to:

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